

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF PENNSYLVANIA**

SIDNEY E. SMITH III, et al., executors	)	
of the Estate of Sidney E. Smith, Jr.,	)	
	)	
Plaintiff,	)	Civil Action No. 02-264 Erie
	)	
v.	)	Hon. Sean J. McLaughlin
	)	Hon. Susan Paradise Baxter
UNITED STATES,	)	
	)	
Defendant.	)	

**MOTION TO PARTIALLY EXCLUDE THE EXPERT REPORT AND  
PROPOSED TESTIMONY OF MATTHEW J. MINNAUGH**

The United States of America requests this Court to exclude three of the four opinions in the expert report of Matthew J. Minnaugh, who is offered by plaintiffs as an expert witness, and any testimony related to these three opinions. Minnaugh's opinions that should be excluded are set forth on pages 2 through 6 of the expert report, and are:

1. Based on Minnaugh's personal experience, the use of the applicable federal rate ("AFR") over a fifteen year duration is a buyout term that meets the requirements of 26 U.S.C. §2703(b)(3);
2. The AFR satisfies 26 U.S.C. §2703(b)(3) as a matter of statutory interpretation; and
3. The AFR is a commercially reasonable rate for Smith FLP because the AFR exceeds the prime rate from time to time.

These three opinions are comprised of legal conclusions that are inadmissible and fall short of the required standards of reliability set forth in In re Paoli Railroad Yard PCB Litig., 35 F.3d 717 (3<sup>d</sup> Cir. 1994), Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993) and Fed. R. Evid. 702 because the opinions lack any analysis and methodology and are presented without support or substantiation.

WHEREFORE the United States moves the Court to exclude three opinions contained in Minnaugh's expert report and any proposed testimony related to the opinions.

Dated: July 18, 2005

Respectfully submitted,

MARY BETH BUCHANAN  
United States Attorney

/s/ Lindsey W. Cooper Jr.

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**CERTIFICATE OF SERVICE**

IT IS CERTIFIED that the MOTION TO PARTIALLY EXCLUDE THE EXPERT REPORT AND PROPOSED TESTIMONY OF MATTHEW J. MINNAUGH, SUPPORTING MEMORANDUM and PROPOSED ORDER were served upon counsel for the plaintiffs this 18<sup>th</sup> day of July, 2005, by sending a copy via ECF.

\_\_\_\_\_*/s/ Lindsey W. Cooper Jr.*\_\_\_\_\_